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2                   **UNITED STATES DISTRICT COURT**  
3                   **DISTRICT OF NEVADA**  
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5                   BRIAN CRISMAN,  
6                   Petitioner,  
7                   vs.  
8                   STATE OF NEVADA, *et al.*,  
9                   Respondents.

Case No. 2:14-cv-01702-GMN-CWH

**ORDER**

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11                 This action, filed by a Nevada state prison proceeding *pro se*, was opened by the Clerk of  
12 Court as a habeas corpus action pursuant to 28 U.S.C. § 2254.

13                 The Court has conducted a preliminary review of the documents initiating this action  
14 pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.  
15 A federal court may only grant a petition for writ of habeas corpus if the petitioner can show that  
16 “he is in custody in violation of the Constitution . . .” 28 U.S.C. § 2254(a). Unless an issue of  
17 federal constitutional or statutory law is implicated by the facts presented, the claim is not  
18 cognizable under federal habeas corpus. *Estelle v. McGuire*, 502 U.S. 62, 68 (1991). A state law  
19 issue cannot be mutated into one of federal constitutional law merely by invoking the specter of a  
20 due process violation. *Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1996), *cert. denied*, 522 U.S.  
21 881 (1997). Petitioner must demonstrate the existence of federal constitutional law which  
22 establishes the right in question. The Court must dismiss a petition “[i]f it plainly appears from the  
23 petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”  
24 Rule 4 of the Rules Governing Section 2254 Cases; *see also Hendricks v. Vasquez*, 908 F.2d 490  
25 (9<sup>th</sup> Cir. 1990).

26                 Petitioner initiated this action by filing a “motion [for] modification of sentence.” (ECF No.  
27 1). The motion is captioned for a Nevada state court. (ECF No. 1, at p. 1). Petitioner does not  
28 allege violation of a federal constitutional right. Rather, petitioner has submitted a motion for

1 modification of his sentence pursuant to Nevada state law, apparently intended for review by a  
2 Nevada state court. There is no actual petition and petitioner's motion for modification does not set  
3 forth a viable claim for federal habeas corpus relief. As such, this action must be dismissed. *See*  
4 Rule 4, Rules Governing Section 2254 Cases. The Court further notes that petitioner has been  
5 afforded an opportunity to submit a proper petition, as the Clerk of Court sent petitioner a blank  
6 habeas corpus form and instructions on October 15, 2014. Finally, the Court notes that petitioner  
7 has since filed a habeas corpus petition in a new action, opened as case number 3:14-cv-636-HDM-  
8 WGC. It is therefore appropriate to dismiss this action for lack of a proper petition and failure to  
9 state a cognizable claim for federal habeas relief.

10       **IT IS THEREFORE ORDERED** that this action is **DISMISSED WITH PREJUDICE**  
11 for lack of a proper petition and failure to state a cognizable claim for federal habeas relief.

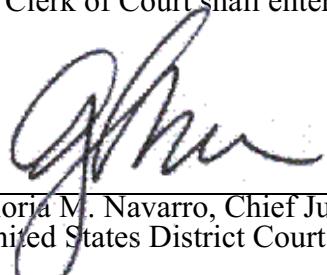
12       **IT IS FURTHER ORDERED** that all pending motions in this action are **DENIED**.

13       **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**. Reasonable  
14 jurists would not find the dismissal of the improperly-commenced action without prejudice to be  
15 debatable or wrong.

16       **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment accordingly.

17       **DATED** this 23rd day of July, 2015.

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Gloria M. Navarro, Chief Judge  
United States District Court